

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
HELENA DIVISION**

**DOUGLAS B. STALLEY, on behalf of  
the United States of America**

**PLAINTIFF**

**V.**

**NO. 2:06CV00234 JMM**

**BAPTIST MEMORIAL HEALTH CARE  
CORPORATION, a Tennessee Corporation**

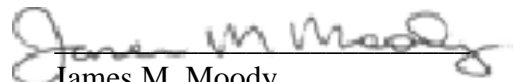
**DEFENDANT**

**ORDER**

Pending is Defendant's motion to lift stay, re-open case, strike the Rule 41(a) notice of voluntary dismissal and re-enter the Court's order of dismissal dated January 17, 2008. (Docket # 30.) Plaintiff has responded. Rule 41(a)(1) provides that an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment. Fed.R.Civ.P. 41(a)(1). Plaintiff loses this right only when an answer or motion for summary judgment has been filed and these two instances have been construed strictly and exclusively. *See Safeguard Business Systems, Inc. v. Hoeffel*, 907 F.2d 861, 863 (8<sup>th</sup> Cir.1990). Because Plaintiff filed a notice of voluntary dismissal before Defendant filed an answer or motion for summary judgment, the voluntary dismissal must be given effect.

Accordingly, Defendant's motion, docket # 30, is denied.

IT IS SO ORDERED this 1<sup>st</sup> day of May, 2008.

  
James M. Moody  
United States District Judge